

1 WILLIAM J. FRIMEL (Bar No. 160287)
2 Seubert Frimel & Warner LLP
3 1075 Curtis Street
4 Menlo Park, CA 94025
5 Tel: 650.322.3048
6 Fax: 650.833.2976
7 bill@sfflaw.com

8
9 Attorneys for Defendants
10 CAPITAL ASSET EXCHANGE & TRADING LLC,
11 CAE ONLINE LLC, RYAN JACOB, and JEFFREY
12 ROBBINS

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SEMICONDUCTOR GLOBAL
SOLUTIONS,

Plaintiff,

v.

CAPITAL ASSET EXCHANGE &
TRADING LLC; CAE ONLINE LLC;
RYAN FRANZKE JACOB, individually;
and JEFFREY SCOTT ROBBINS,
individually,

Defendants.

Case No. 4:25-cv-04075-HSG

**NOTICE OF MOTION AND MOTION BY
DEFENDANTS CAPITAL ASSET
EXCHANGE & TRADING LLC, CAE
ONLINE LLC, RYAN JACOB, AND
JEFFREY ROBBINS TO STAY ACTION
PENDING DETERMINATION BY OFFICE
OF FOREIGN ASSETS CONTROL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Hearing Date: July 31, 2025
Hearing Time: 2:00 p.m.
Courtroom: 2
Judge: Hon. Haywood S. Gilliam, Jr.

NOTICE OF MOTION

2 PLEASE TAKE NOTICE that, on July 31, 2025, at 2:00 pm, or as soon thereafter as
3 counsel may be heard, in the United States District Court for the Northern District of California,
4 located at Courtroom 2, 1301 Clay Street, Oakland, CA 94612, Defendants Capital Asset
5 Exchange & Trading LLC, CAE Online LLC (“CAEO”), Ryan Jacob and Jeffrey Robbins
6 (collectively, “Defendants”) will and hereby do move to stay this action pending the
7 determination by the United States Treasury Department’s Office of Foreign Assets Control
8 (“OFAC”) regarding CAET’s application for a license to refund the payment at issue in this
9 action by Semiconductor Global Solutions (“SGS”). This motion shall be based on this Notice,
10 the attached Memorandum of Points and Authorities, the Declarations of Ryan Jacob and William
11 J. Frimel, and such other and further material as may be submitted to the Court on or before the
12 date of the hearing in this matter.

MOTION TO STAY

14 CAET moves to stay this action pending the determination by OFAC regarding CAET's
15 application for a license to refund the payment at issue in this action by SGS.

ISSUE TO BE DECIDED

17 The issue to be decided is whether this action should be stayed pending the determination
18 by OFAC regarding CAET's application for a license to refund the payment at issue in this action
19 by SGS.

20 Dated: May 28, 2025

/s/ William J. Frimel

WILLIAM J. FRIMEL
Attorneys for Defendants
CAPITAL ASSET EXCHANGE & TRADING
LLC, CAE ONLINE LLC, RYAN JACOB, and
JEFFREY ROBBINS

TABLE OF CONTENTS

	Page(s)
INTRODUCTION	1
STATEMENT OF FACTS	2
A. The Relevant U.S. Export Regulations	2
1. The BIS maintains a list of entities that cannot receive certain types of equipment without a license	2
2. The EARs prohibit the export of any item subject to the EARs to semiconductor manufacturers in China	3
3. The EARs prohibit payments to “military-intelligence end users”	4
4. The EARs require CAET to inquire into the end use of restricted items	4
5. OFAC regulations prohibit the transfer of funds to entities considered threats to U.S. national security	5
B. The Parties’ Transaction	6
ARGUMENT	7
I. THIS ACTION SHOULD BE STAYED BASED ON THE PRIMARY JURISDICTION DOCTRINE	7
A. OFAC’s Determination Will Resolve an Issue Important to This Matter	7
B. The Issue Presented by the License Application Is Within OFAC’s Jurisdiction	8
C. The Relevant Regulations Require Agency Expertise and Uniformity	9
II. THIS ACTION SHOULD BE STAYED BASED ON THE COURT’S DISCRETION TO CONTROL ITS DOCKET	10
A. If the Court Requires CAET to Refund SGS’s Payment, CAET May Be Forced to Violate U.S. Export Regulations	10
B. Entering a Stay Will Not Meaningfully Prejudice SGS	11
C. A Stay Would Be in the Public Interest	12
CONCLUSION	12

1

2 **TABLE OF AUTHORITIES**

3

	Page(s)
4 <i>In re 650 Fifth Ave.</i> , No. 08 Civ. 10934, 2013 WL 2451067 (S.D.N.Y. Jun. 6, 2013)	9
5 <i>ASCII Corp. v. STD Ent'mt. USA, Inc.</i> , 844 F. Supp. 1378 (N.D. Cal. 1994)	10
6 <i>Akeena Solar Inc. v. Zep Solar Inc.</i> , No. C 09-05040, 2010 WL 1526388 (N.D. Cal. 7 Apr. 14, 2010)	12
8 <i>Barrera v. Comcast Holdings Corp.</i> , No. 14-cv-00343, 2014 WL 1942829 (N.D. Cal. 9 May 12, 2014)	1, 9
10 <i>Cal. Apt. Ass'n. v. San Diego Cty. Apt. Ass'n., Inc.</i> , No. 11cv300, 2011 WL 1002667 (S.D. Cal. Mar. 18, 2011)	11
11 <i>Chamber of Commerce v. Becerra</i> , 438 F. Supp. 3d 1078 (E.D. Cal. 2020)	11
12 <i>Changji Esquel Textile Co. v. Raimondo</i> , 573 F. Supp. 3d 104 (D.D.C. 2021)	3
13 <i>Chevron U.S.A. Inc. v. Natural Resources Def. Council</i> , 467 U.S. 837 (1984)	9
14 <i>Clark v. Time Warner Cable</i> , 523 F.3d 1110 (9th Cir. 2008)	7
15 <i>Clinton v. Jones</i> , 520 U.S. 681 (1997)	10
16 <i>Cortez v. Trans Union, LLC</i> , 617 F.3d 688 (3d Cir. 2010)	6
17 <i>Cuviello v. City of Vallejo</i> , 944 F.3d 816 (9th Cir. 2019)	10
18 <i>Eberle v. Smith</i> , No. 07-CV-0120, 2008 WL 238450 (S.D. Cal. Jan. 29, 2008)	12
19 <i>Fulmen Co. v. Offc. of Foreign Assets Control</i> , 547 F. Supp. 3d 13 (D.D.C. 2020)	2, 8-9
20 <i>Gentry v. Cellco Pshp.</i> , No. CV 05-7888, 2006 WL 6927883 (C.D. Cal. Mar. 22, 21 2006)	7, 8
22 <i>GPAC, Inc. v. D.W.W. Enters., Inc.</i> , 144 F.R.D. 60 (D. N.J. 1992)	10
23 <i>Hart v. Charter Comms., Inc.</i> , No. SA CV 17-0556, 2019 WL 7940684 (C.D. Cal. 24 Aug. 1, 2019)	11
25 <i>Hassan v. United States</i> , No. CIV. S-12-1933, 2012 WL 6088314 (E.D. Cal. Dec. 6, 26 2012)	6
27 <i>Islamic Am. Relief Agency v. Gonzales</i> , 477 F.3d 728 (D.C. Cir. 2007)	9

1		
2	<i>Kang v. Credit Bureau Connection, Inc.</i> , No. 1:18-CV-01359, 2020 WL 2539292 (E.D. Cal. May 19, 2020)	6
3		
4	<i>Klaustech, Inc. v. AdMob, Inc.</i> , No. C 10-05899, 2011 WL 13152861 (N.D. Cal. Feb. 2, 2011)	12
5		
6	<i>Ponzio v. 3M Co.</i> , No. 2:16-CV-3521, 2016 WL 6407376 (C.D. Cal. Oct. 28, 2016)	10
7		
8	<i>NextG Networks of Cal., Inc. v. City of San Francisco</i> , No. C 05-0658, 2005 WL 8177903 (N.D. Cal. Jun. 7, 2005)	9
9		
10	<i>Reese v. Odwalla, Inc.</i> , 30 F. Supp. 3d 935 (N.D. Cal. 2014)	9
11		
12	<i>Reiter v. Cooper</i> , 507 U.S. 258 (1993)	7
13		
14	<i>Rent-A-Center, Inc. v. Canyon Tel. & Appliance Rental, Inc.</i> , 944 F.2d 597 (9th Cir. 1991)	11
15		
16	<i>Saubers v. Kashi Co.</i> , 39 F. Supp. 3d 1108 (S.D. Cal. 2014)	2, 8
17		
18	<i>Syntek Semiconductor Co. v. Microchip Tech.</i> , 307 F.3d 775 (9th Cir. 2002)	7
19		
20	<i>Terry v. Register Tapes Unlimited, Inc.</i> , No. 2:16-cv-0806, 2020 WL 3819417 (E.D. Cal. Jul. 8, 2020)	11
21		
22	<i>United States v. Shih</i> , 73 F.4th 1077 (9th Cir. 2023)	3
23		
24	<i>Williams v. Nationstar Mortgage, LLC</i> , No. 6:16-cv-01357, 2016 WL 6905382 (D. Or. Nov. 23, 2016)	11
25		
26	<i>Zaborowski v. MHN Govt. Servs., Inc.</i> , No. C 1205109, 2013 WL 1832638 (N.D. Cal. May 1, 2013)	2, 12
27		
28		

INTRODUCTION

2 Plaintiff Semiconductor Global Solutions (“SGS”), a Chinese corporation in Shanghai,
3 China, purchased semiconductor manufacturing equipment (“SME”) from Defendant Capital
4 Asset Exchange & Trading LLC (“CAET”) with numerous potential military applications,
5 including the manufacture of semiconductors used in radar, missile guidance, supercomputing
6 and radiation-hardened electronics. As U.S. Bureau of Industry and Security (“BIS”) regulations
7 restrict the export of the equipment SGS bought (the “Equipment”), and require CAET to “[t]ake
8 into account any abnormal circumstances in a transaction that indicate that the export may be
9 destined for an inappropriate end-use, end-user, or destination,” 15 C.F.R. § 732, Supp. 3, §
10 (a)(1), CAET did extensive due diligence regarding SGS.

11 During that investigation, CAET learned SGS is partially owned by another Chinese
12 entity, Yangzhou SMIC Xicheng Xingsheng Venture Capital Partnership, which in turn is
13 partially owned by Chinese semiconductor manufacturer Semiconductor Manufacturing
14 International Corporation (“SMIC”). SMIC appears on both the “Non-SDN Chinese Military-
15 Industrial Complex Companies List” maintained by the Treasury Department’s Office of Foreign
16 Assets Control (“OFAC”), and the BIS’s “Entity List.” Those lists contain entities OFAC and
17 BIS have determined to pose risks to U.S. national security, and SMIC appears on them due to its
18 relationship with the Chinese military. Thus, CAET determined that it could not lawfully deliver
19 the Equipment to SGS. Moreover, as BIS regulations also prohibit the “support” of any
20 “military-intelligence end use” or “end user,” including by “[p]erforming any contract, service or
21 employment,” 15 C.F.R. § 744.6(b)(5), CAET determined that it could not refund SGS’s payment
22 either, at least without a license from the appropriate regulatory agency. Accordingly, on May
23 16, 2025, CAET submitted a request to OFAC for a license to refund SGS’s payment.

24 CAET respectfully requests that the Court stay this action, based on the doctrine of
25 primary jurisdiction, pending OFAC’s response to CAET’s request for a license to refund SGS’s
26 payment. *See Barrera v. Comcast Holdings Corp.*, No. 14-cv-00343, 2014 WL 1942829, *2
27 (N.D. Cal. May 12, 2014) (entering stay on the ground that “the doctrine of primary jurisdiction
28 applies because the very issue on which Plaintiff’s claims are predicated — liability under the

1 [Telephone Consumer Protection Act] when a wireless telephone user has changed phone
 2 numbers — is currently before the” Federal Communications Commission). OFAC has special
 3 competence in the area of sanctions enforcement, and thus deference to its conclusions regarding
 4 the legality of CAET’s transaction with SGS is warranted. *See Fulmen Co. v. Offc. of Foreign*
 5 *Assets Control*, 547 F. Supp. 3d 13, 23 (D.D.C. 2020) (“OFAC, in particular, is entitled to even
 6 greater deference” than a typical regulatory agency — “indeed, ‘extreme[] deference[]’ —
 7 because its decisions implicate national security and foreign policy”). Further, because CAET’s
 8 decision not to proceed with the transaction or refund was based on OFAC and BIS regulations,
 9 OFAC’s determination may substantially affect the disposition of this matter. *See, e.g., Saubers*
 10 *v. Kashi Co.*, 39 F. Supp. 3d 1108, 1112 (S.D. Cal. 2014) (as ‘Plaintiffs’ claims rely heavily, if
 11 not entirely, on the premise that the FDA has concluded that ‘evaporated cane juice’ is not the
 12 common or usual name for any sweetener,” and “the FDA’s articulation of its considered view on
 13 this matter will undoubtedly affect issues being litigated in this action,” “application of the
 14 primary jurisdiction doctrine is favored” and a stay was warranted).

15 A stay is also appropriate pursuant to the Court’s inherent power to manage its docket, as
 16 a stay will promote efficiency by avoiding the risk that the Court and OFAC will make
 17 inconsistent determinations regarding the applicable regulations, and, given the early stage of this
 18 case (no discovery has been done and no trial date has been set), will not prejudice SGS. *See,*
 19 *e.g., Zaborowski v. MHN Govt. Servs., Inc.*, No. C 1205109, 2013 WL 1832638, *3 (N.D. Cal.
 20 May 1, 2013) (stay pending appeal pursuant to court’s inherent power would serve “the public
 21 interest” because “judicial resources will be wasted if this case proceeds all the way to trial, only
 22 for the Court to later discover that the case should have proceeded through arbitration”).

23 **STATEMENT OF FACTS**

24 **A. The Relevant U.S. Export Regulations**

25 **1. The BIS maintains a list of entities that cannot receive certain types of**
 26 **equipment without a license**

27 “The Export Administration Regulations (‘EARs’), administered by the Department of
 28 Commerce’s Bureau of Industry and Security (‘BIS’), impose controls on certain exports to

1 ‘serve the national security, foreign policy, nonproliferation of weapons of mass destruction, and
 2 other interests of the United States.’” *United States v. Shih*, 73 F.4th 1077, 1089 (9th Cir. 2023)
 3 (quoting 15 C.F.R. §§ 730.1, 730.6). “Most items subject to the EARs are identified on a BIS
 4 Commerce Control List and given an Export Control Classification Number (“ECCN”).” *Id.* at
 5 1090 (citing 15 C.F.R. § 774, Supp. No. 1).

6 The equipment SGS purchased from CAET consisted of a Hitachi S-9380 Type II
 7 Scanning Electron Microscope, and a Hitachi S-9380 Critical Dimension Scanning Electron
 8 Microscope. (Decl. of Ryan Jacob, May 28, 2025 (“Jacob Decl.”), ¶ 3 & Exhs. A, B.) In
 9 semiconductor manufacturing, scanning electron microscopes (“SEMs”) are used to measure
 10 nanoscale features on semiconductor wafers. (*Id.* ¶ 8.) Per the EARs, SEMs fall under Export
 11 Control Classification Number (“ECCN”) 3B992 (“Equipment not controlled by 3B002, 3B993,
 12 or 3B994, for the inspection or testing of electronic ‘components’ and materials . . . and ‘specially
 13 designed’ ‘parts,’ ‘components’ and ‘accessories’ therefor”). 15 C.F.R. § 774, Supp. No. 1, Cat.
 14 3. The Equipment has numerous potential military applications, including the manufacture of
 15 semiconductors used in radar, missile guidance, supercomputing and radiation-hardened
 16 electronics. (Jacob Decl. ¶ 9.)

17 The BIS “maintains [an] ‘Entity List,’ which includes foreign persons ‘reasonably
 18 believed to be involved, or to pose a significant risk of being or becoming involved, in activities
 19 contrary to the national security or foreign policy interests of the United States.’” *Changji Esquel
 20 Textile Co. v. Raimondo*, 573 F. Supp. 3d 104, 108 (D.D.C. 2021) (internal quotation marks
 21 omitted). “Listed entities are ‘prohibited from receiving some or all items subject to the EARs
 22 unless the exporter secures a license.’” *Id.* at 109. Except for “items ‘necessary to detect,
 23 identify and treat infectious disease,’” “all other license applications are presumptively denied for
 24 most items.” *Id.* (citing 85 Fed. Reg. at 44,160).

25 **2. The EARs prohibit the export of any item subject to the EARs to
 26 semiconductor manufacturers in China**

27 The EARs prohibit, without a license, the export of an item subject to the EARs such as
 28 the Equipment, if the exporter knows the item is “destined for . . . [s]emiconductor manufacturing

1 equipment (SME)” in a country in “Country Group D:5,” which includes China, “for the
 2 ‘development’ or ‘production’ of ‘equipment,’ ‘components,’ ‘assemblies,’ or ‘accessories’
 3 specified in ECCN[] . . . 3B992,” *i.e.*, the ECCN applicable to the Equipment. 15 C.F.R. §
 4 744.23(a)(4)(i). The expansive list of ECCNs in Section 744.23 generally includes “front end of
 5 line,” or “FEOL,” SME, meaning SME related to the first stage of semiconductor manufacturing,
 6 where transistors and other basic components are created on a silicon wafer. Publicly available
 7 information makes clear that, in addition to refurbishing and selling FEOL equipment such as
 8 scanning electron microscopes, SGS “also develops and sells semiconductor equipment.” (Jacob
 9 Decl. ¶¶ 11-12 & Exh. C.)

10 **3. The EARs prohibit payments to “military-intelligence end users”**

11 Further, under the EARs, “no ‘U.S. person’ may, without a license from BIS, ‘support’ . . .
 12 . [a] ‘military-intelligence end use’ or a ‘military-intelligence end user,’ as defined in § 744.22(f),
 13 in . . . the People’s Republic of China . . .” 15 C.F.R. § 744.6(b)(5). A “military-intelligence
 14 end use” includes “the ‘development,’ ‘production,’ operation, installation [of] . . ., or
 15 incorporation into, items described on the U.S. Munitions List (USML),” *id.* § 744.22(f)(1),
 16 which in turn includes hardware and software for the manufacture, guidance and detection of
 17 missiles and bombs, 22 C.F.R. § 121.1, Cat. IV(a). “Support” is defined to mean, *inter alia*,
 18 “[p]erforming any contract, service, or employment you know may assist or benefit any of the
 19 end uses or end users described in paragraphs (b)(1) through (5) of this section,” which include
 20 “military-intelligence end users,” “including, but not limited to: Ordering, buying, removing,
 21 concealing, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight
 22 forwarding, or conducting negotiations in furtherance of.” 15 C.F.R. § 744.6(b)(6)(iv). Thus, a
 23 U.S. exporter is not only prohibited from selling restricted equipment to an entity on the Entity
 24 List without a license, but also may not “perform[] any contract” with, or otherwise provide
 25 “support” to, a “military-intelligence end user,” and “supporting” includes activities such as
 26 performing under a contract, “servicing,” “financing” and “conducting negotiations.”

27 **4. The EARs require CAET to inquire into the end use of restricted items**

28 Under the EARs, “[y]ou may not, without a license, knowingly export, reexport, or

1 transfer (in-country) any item subject to the EAR to an end user or end use that is prohibited by
 2 part 744 of the EAR.” 15 C.F.R. § 736.2(b)(5). To comply, a seller of restricted equipment must,
 3 before completing a sale, “[d]ecide whether there are ‘red flags’” associated with the transaction,
 4 which means “[t]ake into account any abnormal circumstances in a transaction that indicate that
 5 the export may be destined for an inappropriate end-use, end-user, or destination.” 15 C.F.R. §
 6 732, Supp. 3, § (a)(1). “If there are ‘red flags,’” the seller has “a duty to check out the suspicious
 7 circumstances and inquire about the end-use, end-user, or ultimate country of destination,”
 8 including by “obtain[ing] documentary evidence concerning the transaction.” *Id.* § (a)(2). “If the
 9 ‘red flags’ cannot be explained or justified and you proceed, you run the risk of having had
 10 ‘knowledge’ that would make your action a violation of the EAR.” *Id.* § (a)(5).

11 Further, BIS guidance makes clear that an “end user” refers to “[t]he ultimate end-user.”
 12 In other words, under the EARs, if the seller of a restricted item is aware that the buyer is an
 13 intermediary likely to resell the item to a prohibited end user (*e.g.*, a military intelligence end user
 14 in China), the seller cannot make the sale without a license. *See, e.g.*, 15 C.F.R. § 732.1(b)(3)
 15 (“The ultimate end-user of your item cannot be a bad end-user.”); *id.* § 732.1(b)(4) (“The ultimate
 16 end-use of your item cannot be a bad end-use.”); *see also* 15 C.F.R. § 732, Supp. 3 (citing, as an
 17 example of a “red flag,” a situation in which “[a]n exporter, reexporter, or transferor receives an
 18 order for which the ultimate owner or user of the items is uncertain, such as a request to ship
 19 equipment for developing or producing integrated circuits to a distributor without a
 20 manufacturing operation”).

21 **5. OFAC regulations prohibit the transfer of funds to entities considered
 22 threats to U.S. national security**

23 “OFAC is an executive agency of the United States Department of the Treasury that
 24 administers and enforces economic trade sanctions based on United States foreign policy and
 25 national security goals against threats to national security, foreign policy, and the national
 26 economy. . . . OFAC’s sanctions are directed towards terrorists, international narcotics traffickers,
 27 and persons involved in the proliferation of weapons of mass destruction, amongst others. . . .
 28 OFAC designates some of these individuals as Specially Designated Nationals and Blocked

1 Persons ('SDNs'), and OFAC periodically publishes and updates its list of SDNs on its 'SDN
 2 List,'" among other lists of sanctioned entities maintained by OFAC, "which is publicly available
 3 online." *Kang v. Credit Bureau Connection, Inc.*, No. 1:18-CV-01359, 2020 WL 2539292, *1
 4 (E.D. Cal. May 19, 2020) (citing 31 C.F.R. § Ch. V, App. A).

5 **B. The Parties' Transaction**

6 As of, respectively, November 28, 2022 and December 7, 2022, the parties executed an
 7 "Invoice Order" and a "Purchase Order" providing that SGS would purchase the Equipment.
 8 (Jacob Decl. ¶ 4 & Exhs. A, B.) SGS agreed to pay, and paid, CAET a total of \$2,000,000 in
 9 exchange for the Equipment. (*Id.* ¶ 7.)

10 Because the items SGS purchased, as discussed, are subject to the EARs, CAET
 11 performed extensive due diligence regarding SGS, including an investigation of SGS's ownership
 12 structure. (*Id.* ¶ 10.) During its investigation, CAET discovered that SGS is partially owned by a
 13 Chinese entity called Yangzhou SMIC Xicheng Xingsheng Venture Capital Partnership, which in
 14 turn is partially owned by SMIC. (*Id.* ¶¶ 13-15 & Exh. D.) SMIC is a partially state-owned
 15 Chinese semiconductor foundry, *i.e.*, a producer of integrated circuits. (*Id.* ¶ 14.) SMIC is on the
 16 OFAC Non-SDN Chinese Military-Industrial Complex Companies List due to its suspected
 17 relationship with the Chinese military, and is also on the BIS Entity List. (*Id.* ¶ 17 & Exh. F; *see also* 15
 18 15 C.F.R. § 744, Supp. No. 4.) Further, SMIC is a "front end of line" equipment
 19 manufacturer, and thus SME cannot be exported to SMIC without a license from the BIS. *See* 15
 20 C.F.R. § 744.23(a)(4)(i).

21 Based on its investigation, CAET determined that, due to the risk that SGS might transfer
 22 the Equipment to SMIC or an entity affiliated with it, CAET could not deliver the Equipment to
 23 SGS. (Jacob Decl. ¶ 18.) CAET also determined that, in light of, among other regulations, 15
 24 C.F.R. § 744.6(b)(5)'s above-mentioned prohibition on "supporting" "military intelligence end
 25 users" (which includes a prohibition on "[p]erforming any contract, service or employment you
 26 know may assist or benefit any" military intelligence "end uses or end users"), refunding SGS's
 27 payment would also be prohibited, at least without a license from the appropriate export
 28 regulator. (*Id.* ¶ 19.) After CAET told SGS as much, SGS brought this action.

1 On May 16, 2025, CAET applied to OFAC for a license to refund SGS's payment. (*Id.* ¶
 2 20.) OFAC has not yet taken any action regarding CAET's application. (*Id.*)

3 **ARGUMENT**

4 **I. THIS ACTION SHOULD BE STAYED BASED ON THE PRIMARY
 5 JURISDICTION DOCTRINE**

6 CAET requests that the Court stay this action until OFAC has made a determination
 7 regarding CAET's application for a license to refund SGS's payment. Such a stay is proper under
 8 the primary jurisdiction doctrine, which "is invoked to stay matters properly cognizable before a
 9 court while the resolution of a relevant or determinative issue within the special competence of an
 10 administrative agency is decided." *Gentry v. Cellco Pshp.*, No. CV 05-7888, 2006 WL 6927883,
 11 *2 (C.D. Cal. Mar. 22, 2006) (citing *Reiter v. Cooper*, 507 U.S. 258, 268 (1993)). In determining
 12 "whether to stay an action under the doctrine," "courts in this Circuit consider the following
 13 factors: (1) the need to resolve the issue; (2) whether the issue has been placed by Congress
 14 within the jurisdiction of an administrative body having regulatory authority pursuant to a statute
 15 that subjects an industry or activity to comprehensive regulation; and (3) whether that regulation
 16 requires expertise or uniformity in administration." *Id.* at *3 (citing *Syntek Semiconductor Co. v.*
 17 *Microchip Tech.*, 307 F.3d 775, 781 (9th Cir. 2002)). These factors support entering a stay.

18 **A. OFAC's Determination Will Resolve an Issue Important to This Matter**

19 If OFAC denies CAET's request for a license to refund SGS's payment, or issues an
 20 advisory opinion saying CAET cannot do so, that will substantially resolve the issue of whether
 21 export regulations permit CAET to issue the refund. Thus, OFAC's determination is plainly
 22 important to the resolution of this case. *See Clark v. Time Warner Cable*, 523 F.3d 1110, 1115-
 23 16 (9th Cir. 2008) (as "Congress has specifically delegated responsibility to the FCC to define
 24 'slamming' violations, . . . and to prescribe the procedures for imposing the appropriate
 25 penalties," and "[t]he question raised by [plaintiff's] complaint — whether a VoIP provider
 26 qualifies as a 'telecommunications carrier' or is otherwise subject to § 258(a)'s requirements —
 27 fits squarely within that delegation," "the primary jurisdiction doctrine provided the district court
 28 with the authority to refer [plaintiff's] claim to the FCC"); *Saubers v. Kashi Co.*, 39 F. Supp. 3d

1 1108, 1112 (S.D. Cal. 2014) (as “Plaintiffs’ claims rely heavily, if not entirely, on the premise
 2 that the FDA has concluded that ‘evaporated cane juice’ is not the common or usual name for any
 3 sweetener,” and “the FDA’s articulation of its considered view on this matter will undoubtedly
 4 affect issues being litigated in this action,” “application of the primary jurisdiction doctrine is
 5 favored”); *Gentry*, 2006 WL 6927883, *3 (“need to resolve the issue” factor weighed in favor of
 6 stay, as “[t]he resolution of whether ETFs are ‘rates charged’” under Federal Communications
 7 Act, which was within Federal Communications Commission’s jurisdiction, “is critical to this
 8 diversity action” because, “if ETFs in this case are interpreted to be ‘rates charged’ under the
 9 FCA, then federal law preempts Plaintiffs’ state law claims”).

10 **B. The Issue Presented by the License Application Is Within OFAC’s Jurisdiction**

11 In 1994, the President issued an Executive Order pursuant to his authority under the
 12 International Emergency Economic Powers Act that “blocked all property and interests in
 13 property of . . . any foreign person” who has “engaged, or attempted to engage, in activities or
 14 transactions that have materially contributed to, or pose a risk of materially contributing to, the
 15 proliferation of weapons of mass destruction or their means of delivery (including missiles
 16 capable of delivering such weapons),” and those held by “any person determined by the Secretary
 17 of the Treasury . . . to be owned or controlled by, or acting or purporting to act for or on behalf of,
 18 directly or indirectly, any person whose property and interests in property are blocked pursuant to
 19 this order.” 70 Fed. Reg. at 38567. “The Secretary” of the Treasury “in turn delegated that
 20 authority to OFAC.” *Fulmen Co. v. Offc. of Foreign Assets Control*, 547 F. Supp. 3d 13, 18
 21 (D.D.C. 2020) (citing 31 C.F.R. §§ 539.802, 544.802). In light of OFAC’s authority to restrict
 22 the transfer of property contributing to the development of weapons of mass destruction, and the
 23 ability of the Equipment to be used in the production of missile guidance systems and other
 24 military applications (Jacob Decl. ¶ 9), OFAC plainly has jurisdiction to regulate CAET’s
 25 potential return of the funds it received from SGS.

26 **C. The Relevant Regulations Require Agency Expertise and Uniformity**

27 Numerous courts have recognized OFAC’s unique expertise in preventing the transfer of
 28 funds likely to be used for purposes contrary to U.S. national security interests, and the

1 complexity of the regulations OFAC enforces. *See Fulmen Co.*, 547 F. Supp. 3d at 23 (“OFAC,
 2 in particular, is entitled to even greater deference” than a typical regulatory agency — “indeed,
 3 ‘extreme[] deferenc[ce]’ — because its decisions implicate national security and foreign policy”)
 4 (quoting *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 734 (D.C. Cir. 2007)); *In re 650*
 5 *Fifth Ave.*, No. 08 Civ. 10934, 2013 WL 2451067, *6 (S.D.N.Y. Jun. 6, 2013) (“Given OFAC’s
 6 unique expertise in matters of terrorist finance and the sensitive nature of the investigations upon
 7 which OFAC makes its determinations, it is entitled to deference even greater than that afforded
 8 an administrative agency statutory interpretation under *Chevron*,” i.e., *Chevron U.S.A. Inc. v.*
 9 *Natural Resources Def. Council*, 467 U.S. 837 (1984)).

10 Thus, all of the primary jurisdiction factors support staying this matter pending a response
 11 from OFAC to CAET’s license application. *See Reese v. Odwalla, Inc.*, 30 F. Supp. 3d 935, 941
 12 (N.D. Cal. 2014) (as “the dispute to be resolved is” whether “use of” a particular “ingredient
 13 name is misleading and prohibited under the” Food, Drug and Cosmetic Act, and “[t]he issue of
 14 proper declaration of ingredients on food labels is one as to which Congress vested the FDA with
 15 comprehensive regulatory authority,” staying case under primary jurisdiction doctrine); *Barrera*
 16 *v. Comcast Holdings Corp.*, No. 14-cv-00343, 2014 WL 1942829, *2 (N.D. Cal. May 12, 2014)
 17 (entering stay on the ground that “the doctrine of primary jurisdiction applies because the very
 18 issue on which Plaintiff’s claims are predicated — liability under the [Telephone Consumer
 19 Protection Act] when a wireless telephone user has changed phone numbers — is currently before
 20 the” Federal Communications Commission); *NextG Networks of Cal., Inc. v. City of San*
 21 *Francisco*, No. C 05-0658, 2005 WL 8177903, *5 (N.D. Cal. Jun. 7, 2005) (because California
 22 Public Utilities Commission (“PUC”) “has primary jurisdiction to consider whether radio
 23 frequency transport service is within the scope of” plaintiff’s “certificate of public convenience
 24 and necessity” issued by that agency, staying case pending PUC’s determination of that issue).
 25 Further, a stay would promote judicial efficiency because, if the Court declines to issue a stay and
 26 requires CAET to refund SGS’s payment, guidance from OFAC prohibiting CAET’s payment to
 27 SGS could require the Court’s order to be reopened.
 28

1 **II. THIS ACTION SHOULD BE STAYED BASED ON THE COURT'S DISCRETION**
 2 **TO CONTROL ITS DOCKET**

3 Even assuming the primary jurisdiction doctrine does not apply, the Court has “broad
 4 discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v.*
 5 *Jones*, 520 U.S. 681, 707-08 (1997). “In determining whether to grant a stay, courts generally
 6 consider whether doing so would ‘cause undue prejudice or present a clear tactical disadvantage
 7 to the non-moving party.’ Other factors considered are ‘the stage in the litigation, [whether]
 8 discovery [is] or [will] be almost completed, [and whether] the matter [has] been marked for
 9 trial.’” *ASCII Corp. v. STD Ent’m’t. USA, Inc.*, 844 F. Supp. 1378, 1380 (N.D. Cal. 1994)
 10 (quoted *GPAC, Inc. v. D.W.W. Enters., Inc.*, 144 F.R.D. 60, 63-64 (D. N.J. 1992)). These factors
 11 also support a stay.

12 **A. If the Court Requires CAET to Refund SGS’s Payment, CAET May Be Forced to**
 13 **Violate U.S. Export Regulations**

14 If the Court directs CAET to refund SGS’s payment before CAET has the opportunity to
 15 consult with OFAC regarding the refund’s legality, CAET may be forced to violate OFAC or BIS
 16 regulations. Transacting with entities sanctioned by OFAC can result in criminal and civil
 17 penalties, including fines and imprisonment. *See* 31 C.F.R. § 501.701(a). The same is true of
 18 exporting items in violation of the EARs. *See* 50 U.S.C. § 4819(a)(2)(A) (“No person may
 19 engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct
 20 required by . . . the Export Administration Regulations,” and a person who does so “shall be fined
 21 not more than \$1,000,000; and, in the case of [an] individual, shall be imprisoned for not
 22 more than 20 years, or both.”); *see also Ponzio v. 3M Co.*, No. 2:16-CV-3521, 2016 WL
 23 6407376, *1 n.1 (C.D. Cal. Oct. 28, 2016) (describing criminal and civil penalties under EARs).

24 It is well-established that the risk of incurring criminal penalties gives rise to a threat of
 25 irreparable harm. *See Cuvillo v. City of Vallejo*, 944 F.3d 816, 832 (9th Cir. 2019) (as failure to
 26 comply with city’s municipal code “constitutes either a misdemeanor or infraction, subject to
 27 potential criminal penalties,” plaintiff “has shown irreparable harm” necessary to enjoin
 28 enforcement of ordinance); *Chamber of Commerce v. Becerra*, 438 F. Supp. 3d 1078, 1103-04

1 (E.D. Cal. 2020) (plaintiffs seeking injunction preventing enforcement of statute “meet their
 2 burden of showing a likelihood of irreparable harm” because, if the statute “takes effect, plaintiffs
 3 have provided sufficient evidence to show California businesses that rely on arbitration
 4 agreements as a condition of employment will be forced to choose between risking criminal or
 5 civil penalties, or both, . . . and foregoing the use of arbitration agreements altogether to avoid
 6 penalties”).

7 **B. Entering a Stay Will Not Meaningfully Prejudice SGS**

8 To the extent SGS suffers any injury due to entry of a stay, it will be a mere delay in
 9 receiving the funds it paid to CAET, unless OFAC advises that paying those funds is unlawful.
 10 *See Terry v. Register Tapes Unlimited, Inc.*, No. 2:16-cv-0806, 2020 WL 3819417, *2 (E.D. Cal.
 11 Jul. 8, 2020) (plaintiff’s allegations of “personal hardship he will experience if he loses his
 12 income from defendants” did not establish irreparable harm, because “[e]conomic harm is
 13 generally not considered irreparable”); *Cal. Apt. Ass’n v. San Diego Cty. Apt. Ass’n, Inc.*, No.
 14 11cv300, 2011 WL 1002667, *2 (S.D. Cal. Mar. 18, 2011) (denying motion for temporary
 15 restraining order preventing alleged copyright infringement because “economic injury alone does
 16 not support a finding of irreparable harm, because such injury can be remedied by a damage
 17 award”) (quoting *Rent-A-Center, Inc. v. Canyon Tel. & Appliance Rental, Inc.*, 944 F.2d 597, 603
 18 (9th Cir. 1991)).

19 Nor is mere delay in the conduct of the litigation sufficient to defeat a stay. *See, e.g., Hart*
 20 *v. Charter Comms., Inc.*, No. SA CV 17-0556, 2019 WL 7940684, *5 (C.D. Cal. Aug. 1, 2019)
 21 (“Litigation delay does not generally constitute sufficient reason to deny an otherwise justified
 22 stay of proceedings.”). Further, this case is at an early stage, as no discovery has been taken and
 23 the pleadings are not yet settled. (Decl. of William J. Frimel, May 28, 2025, ¶¶ 2-3.) Thus, a stay
 24 will not put the parties at risk of losing the benefit of significant trial preparations. *See, e.g.,*
 25 *Williams v. Nationstar Mortgage, LLC*, No. 6:16-cv-01357, 2016 WL 6905382, *2-3 (D. Or.
 26 Nov. 23, 2016) (as “the case is in the early stages of the proceedings” and a stay “would reduce
 27 the financial hardship defendant would sustain defending issues that could be rendered moot by
 28 the” order in related appeal, stay was appropriate); *Klaustech, Inc. v. AdMob, Inc.*, No. C 10-

1 05899, 2011 WL 13152861, *2 (N.D. Cal. Feb. 2, 2011) (“[T]his case is in the early stage of
 2 litigation and this factor weighs in favor of a stay” pending patent reexamination, as “little to no
 3 discovery has taken place” and “no trial date has been set”); *Akeena Solar Inc. v. Zep Solar Inc.*,
 4 No. C 09-05040, 2010 WL 1526388, *2 (N.D. Cal. Apr. 14, 2010) (same).

5 **C. A Stay Would Be in the Public Interest**

6 As discussed (*see Stmt. of Facts (“SOF”) § A supra*), the relevant BIS regulations, such as
 7 the prohibition on providing “support” to foreign military intelligence end users, 15 C.F.R. §
 8 744.6(b)(6)(iv), are geared toward protecting U.S. national security interests, SGS appears to have
 9 ties with an entity recognized by U.S. regulators as posing threats to those interests (*see SOF § B*
 10 *supra*), and OFAC’s purpose is to regulate transactions that have significant national security
 11 implications (SOF § A.5 *supra*). Accordingly, entering a stay until OFAC has the opportunity to
 12 evaluate any proposed payment by CAET to SGS would be in the public interest. The requested
 13 stay would also serve the goal of judicial efficiency, as it would cause a waste of judicial
 14 resources if CAET refunded SGS’s funds and OFAC later determined that CAET was not legally
 15 permitted to do so. *See Zaborowski v. MHN Govt. Servs., Inc.*, No. C 12-05109, 2013 WL
 16 1832638, *3 (N.D. Cal. May 1, 2013) (stay pending appeal would serve “the public interest”
 17 because “judicial resources will be wasted if this case proceeds all the way to trial, only for the
 18 Court to later discover that the case should have proceeded through arbitration”); *Eberle v. Smith*,
 19 No. 07-CV-0120, 2008 WL 238450, *4 (S.D. Cal. Jan. 29, 2008) (because “continuing to litigate
 20 in this Court during the pendency of the appeal” at issue would pose a “risk of redundant or
 21 inconsistent actions,” “the public interest weighs in favor of a stay”).

22 **CONCLUSION**

23 For the foregoing reasons, this case should be stayed until OFAC makes a determination
 24 regarding CAET’s request for a license to refund the payment made to CAET by SGS.
 25
 26
 27
 28

1 Dated: May 28, 2025

/s/ William J. Frimel

2 WILLIAM J. FRIMEL
3 Attorneys for Defendants
4 CAPITAL ASSET EXCHANGE & TRADING LLC,
5 CAE ONLINE LLC, RYAN JACOB, and JEFFREY
6 ROBBINS

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28